

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

S. M., ON BEHALF OF THEMSELF  
AND AS PARENT/GUARDIAN/NEXT  
FRIEND OF S.M., A MINOR  
STUDENT WITH DISABILITIES;  
AND J. M., ON BEHALF OF  
THEMSELF AND AS  
PARENT/GUARDIAN/NEXT FRIEND  
OF S.M., A MINOR STUDENT WITH  
DISABILITIES;

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W-21-CV-01305-ADA-DTG

*Plaintiffs,*

v.

TEXAS EDUCATION AGENCY,  
KILLEEN INDEPENDENT SCHOOL  
DISTRICT,

*Defendants.*

**REPORT AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE ALAN D ALBRIGHT,  
UNITED STATES DISTRICT JUDGE**

This Report and Recommendation is submitted to the Court pursuant to 28 U.S.C. § 636(b)(1)(C), Fed. R. Civ. P. 72(b), and Rules 1(f) and 4(b) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Before the Court is Plaintiffs' Notice of Rule 41 Dismissal. (ECF No. 27) After careful consideration of the briefs, arguments of counsel, and the applicable law, the Court **RECOMMENDS** that Plaintiffs' claims against Defendant Killeen Independent School District be dismissed with prejudice.

**I. DISCUSSION**

On October 17, 2022, Plaintiffs filed a "Notice of Rule 41 Dismissal," seeking to dismiss its claims against Defendant Killeen Independent School District, with prejudice, and with each

party to pay their own fees and costs. ECF No. 27. However, Defendant Killeen Independent School District filed a counterclaim before the Notice of Rule 41 dismissal. The Court therefore interprets Plaintiffs' Notice as a Motion for Dismissal with prejudice. Defendant Killeen Independent School District has not objected to the Motion for Dismissal with prejudice; therefore, the Court treats the Motion as unopposed. Because Plaintiff seeks a dismissal with prejudice, the Court finds that there will be no adverse effect on Defendant, and it is appropriate to grant the dismissal. The Court recommends that Plaintiffs' claims against Defendant Killeen Independent School District be dismissed with prejudice.

## II. RECOMMENDATION

For the above reasons, it is the **RECOMMENDATION** of the United States Magistrate Judge to the United States District Judge that Plaintiffs' claims against Defendant Killeen Independent School District be **DISMISSED WITH PREJUDICE**.

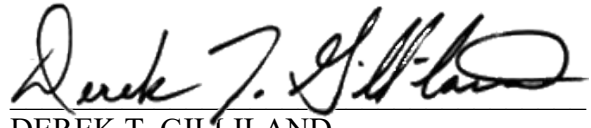
## III. OBJECTIONS

The parties may wish to file objections to this Report and Recommendation. Parties filing objections must specifically identify those findings or recommendations to which they object. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v Arn*, 474 U.S. 140, 150–53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc). Except upon grounds of plain error, failing to object shall further bar the party from appellate

review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas*, 474 U.S. at 150–53; *Douglass*, 79 F.3d at 1415.

SIGNED this 3rd day of March, 2023.

A handwritten signature in black ink, appearing to read "Derek T. Gilliland", written over a horizontal line.

DEREK T. GILLILAND  
UNITED STATES MAGISTRATE JUDGE